OROVILLE FACILITIES RELICENSING COLLABORATIVE PROCESS Proposed Roles and Process

The Oroville Facilities Relicensing Collaborative Process is a public process that is open to anyone who is interested in the relicensing of the Oroville Facilities subject to the following ground rules.

Roles of Involved Parties

<u>Interested Parties</u>. Interested Parties are those people or entities that have an interest in the outcome of the relicensing of the Oroville Facilities. To the extent desired by an individual Interested Party, the Interested Parties will remain informed about and provide input regarding relicensing activities.

<u>Participants</u>. Participants are a subset of the Interested Parties who have chosen to be actively involved in the relicensing process, both with respect to the development of credible scientific information relevant to the decisions that need to be made in the relicensing process and in the development of a settlement agreement. This will occur through participation at Plenary Group, Work Group, and Task Force meetings, working to collaboratively develop solutions, by providing written comments, or otherwise providing input.

<u>Licensee</u>. The Licensee is the State of California Department of Water Resources (DWR). The Licensee shall act as a full Participant in the collaborative process and will take the lead in developing necessary information and preparing formal documents. The Licensee will propose agendas (for review and input by the other Participants) for all meetings.

The Licensee is committed to supporting the collaborative process in seeking lasting agreements to major issues related to the relicensing of the Oroville Facilities that are acceptable to as many of the participants as possible. However, the Licensee is required to file an application to relicense the Oroville Facilities with the FERC no later than January 31, 2005, regardless of the status of the collaborative process at that time.

<u>Consulting Team</u>. The Consulting Team includes scientific and recreational consultants, engineers, regulatory specialists, and public involvement and meeting facilitation consultants retained by the Licensee. The Consulting Team supports DWR with specialized expertise. Members of the Consulting Team will not have the authority to negotiate on behalf of or bind the Licensee or any other Participant.

<u>Facilitator</u>. The facilitator's role is to help the Participants reach lasting agreement (between as many of the Participants as possible on as many issues as possible). The facilitator will help the Participants identify goals, identify issues, develop and maintain critical paths, accomplish creative problem solving, and reach resolution of issues.

<u>Statutory Authorities.</u> Certain parties to the collaborative process have statutory authority defined in federal and state law. While agencies with statutory authority may choose to exercise

that authority through a settlement agreement, such a decision is based upon adequate information in the record, and a determination by the agency that it can meet its statutory objectives through settlement. Statutory authority cannot be constrained or obviated by consensus or agreement. A list of certain Participants with statutory authority include:

- Departments of Interior and Commerce: Statutory authority for the Departments of Interior and Commerce is contained in the Federal Power Act (Sections 18, 10(j) and 10(a)), the Fish and Wildlife Coordination Act, the Endangered Species Act, and the National Environmental Policy Act. The US Fish and Wildlife Service will represent the Department of Interior in the process with regard to Interior's exercise of its responsibilities for fishways, fish and wildlife resources, and related matters. Similarly, the National Marine Fisheries Service will represent the Department of Commerce with regard to fishways, fishery resources, and related matters.
- Federal Energy Regulatory Commission (FERC): Statutory authority for the FERC is contained in the Federal Power Act and NEPA.
- United States Forest Service (USFS): Statutory authority for USFS is contained in the Fish and Wildlife Coordination Act.
- State of California Water Resources Control Board (SWRCB): Statutory authority for SWRCB is contained in Section 401 of the Clean Water Act.
- State of California Department of Fish and Game (DFG): Statutory authority for DFG is contained in the Fish and Wildlife Coordination Act.
- State of California Department of Parks and Recreation (DPR), State Historic Preservation Office (SHPO): Statutory authority for SHPO contained in Section 106 of the National Historic Preservation Act.
- Indian Tribes: Statutory authority for Indian Tribes is contained within the Federal Power Act and Section 106 of the National Historic Preservation Act.

Composition of Plenary Group and Work Groups

Each Participant will identify a primary representative(s) for the Plenary Group and for each Work Group that they want to participate in. Rosters will be maintained of each Work Group. DWR will actively seek participation from other groups to ensure broad and balanced representation in both the Plenary Group and the Work Groups.

Responsibilities of Participants

<u>Attendance</u>. Participants will make every effort to attend meetings and inform the facilitator in advance of any absence at a meeting or any change in representation. If possible, each

representative will identify a back-up person, prepared to represent their organization when needed.

<u>Agendas</u>. Participants will assist the Licensee in developing meeting agendas and adhering to them.

<u>Preparation</u>. Participants will come prepared for meetings having reviewed all previously distributed material relating to an agenda item. After the initial "getting up to speed" of all of the Participants, if a participant is new to the group, it is their responsibility to be briefed by their organization or to ask for a separate briefing by the Licensee or facilitator outside of the group meetings.

If a Participant would like the Work Group to consider a specific proposal, it is the responsibility of that Participant to prepare and provide whatever written material would be useful to the Work Group.

<u>Participation</u>. Each Participant is expected to be a willing contributor at meetings, to communicate actively (listen, don't interrupt, communicate early, no side conversations, be clear and concise, suggest solutions), to share all necessary factual information, and to strive for consensus on a timely basis. Each Participant is expected to be open minded, to listen to others, to respect others' points of view, to be direct and considerate, show respect for the other Participants, and be willing to explain their concerns to others.

Authority. If a Participant does not have authority to bind its organization, the Participant will keep its organization briefed on an on-going basis about the activities of the group, the issues being addressed, and possible solutions to those issues. The Participant will incorporate the input they have received from their internal discussions into their participation at the group level. When the Work Group identifies a viable solution and tries to determine whether there is consensus, the Participant will state whether (1) they can live with the solution, (2) they think their organization can live with the solution, and (3) they need further approval from their organization. When discussing the proposed solution internally (assuming the Participant has stated they can live with the solution), the Participant will advocate the solution as a viable approach for their organization.

<u>Assignments</u>. Ideally, all members of a Work Group will volunteer to work on outside-of-the-meeting assignments (following up on specific discussions, preparing proposals, laying groundwork for future discussion). In some instances, it may be appropriate for the Licensee to provide draft materials for purposes of the Work Group's consideration. Participants should complete assignments on schedule.

Meeting Guidelines

<u>Response Time</u>. Participants will have sufficient time to review material and proposed solutions so that they can meaningfully participate in the collaborative process. Specifically, Participants

will have sufficient time for internal review of major policy matters before making decisions on such matters.

<u>Brainstorming</u>. Participants will be encouraged to "brainstorm" a variety of solutions to specific issues. When a Participant identifies possible solutions as part of this process it is on behalf of the Work Group, not their individual organizations, and a Participant will not be held to any brainstorming ideas until such time as they have indicated a willingness to live with a proposed solution.

<u>Decision Making</u>. DWR is committed to working toward the resolution of issues and the development of durable settlement agreements through the collaborative process using a consensus-based approach – where all Participants (including the Licensee) can live with the decision being made. Participants may be asked to "live with" something that is not their preferred ideal, but recognize that it is a fair decision, considering the many participating interests. (Consensus does not mean that Participants get everything that they want or agree to all components of a solution). Ultimately decisions regarding the FERC application contents remain with DWR as the licensee of the Oroville Facilities.

<u>Dispute Resolution</u>. On an as-needed basis, the facilitator will use a variety of dispute resolution techniques (including mediation) to work through difficult issues. Participants will use an escalation process whereby they first strive to resolve conflicts that arise within the group where the conflict originates. If the parties fail to reach resolution at the initial level, by mutual agreement the parties can elevate the dispute to the next level. For example, a conflict originating within a Work Group that is not resolved at the Work Group level may be elevated to the Plenary Group for resolution. If the Plenary Group is unable to achieve resolution, DWR will seek resolution with the appropriate regulatory agency(ies), excluding FERC, and report back to the Plenary Group. As a last resort, if DWR in concert with the appropriate regulatory agency(ies) cannot resolve the issue, then the Plenary Group may file a request with FERC to resolve the disagreement according to the provisions of 18 CFR 4.34(i)(6)(vii).

<u>Identifying Collaborative Process Breakdown</u>. Process breakdown is not deadlock on a single issue or resource area, but breakdown of the whole collaborative process. Indications that the process is experiencing difficulties may include waning attendance at meetings or notification from key stakeholders that they intend to cease participation in the process. At such time, DWR and the Participants will review and consider the entire process and attempt to re-establish and maximize balanced participation to get the collaborative process back on track.

<u>Caucuses</u>. Time will be allowed at each meeting for caucuses, as necessary.

<u>Tracking Issue and Resolutions</u>. DWR will track the progress of working groups by maintaining an annotated list of issues that identifies specific issues, status of the issues, and resolutions. While a Participant will not be precluded from reopening a resolved issue, the Participants will make every effort to move forward once decisions have been made and to only request that the group revisit decisions in limited situations.

<u>Meetings</u>. Meetings will be scheduled in accordance with the Communications Protocol and open to the public.

Meeting notices, agendas, and minutes will be handled in accordance with the Communications Protocol. In addition, the Licensee will provide semi-annual written status reports to FERC in accordance with the Communications Protocol.

<u>Information</u>. Participants will have access to all documents developed during relicensing activities. The Licensee and all Participants will distribute necessary information on a timely, equal and open basis.

Some information will need to be subject to a confidentiality agreement. It is the responsibility of a Participant providing confidential information to ask the group to treat it confidentially. All Participants will honor confidentiality agreements.

To the extent that non-confidential data or information is draft, preliminary or otherwise qualified, if Participants use such data/information outside of the context of the Oroville Facilities relicensing, they will appropriately qualify the data/information.

Media Relations. All meetings are open to the public so media representatives can be expected to attend and will have access to all documents developed during relicensing activities. In addition, the Licensee intends to prepare quarterly newsletters to update interested members of the public and the media on the process. Participants understand that 'debating the process in the media' can undermine the collaborative process. Using the collaborative process, Participants will determine appropriate stages at which to formally update the media on the progress of relicensing activities and will fashion such updates as a group. Participants agree to represent the collaborative process and settlement agreements to the media in a balanced manner and to notify the Plenary Group of any individual Participant's media contact. At such time when the Participants are ready to develop settlement agreements, the open meeting format becomes negotiable.